IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

No. 2:16-CV-00190-JRG-RSP

ORDER

The above entitled and numbered civil action was referred to United States Magistrate Judge Roy S. Payne pursuant to 28 U.S.C. § 636. Now before the Court is the Report and Recommendation (Dkt. No. 200) by Magistrate Judge Payne, which recommends that Garmin's Motion for Partial Summary Judgment (Dkt. No. 165) be denied. Garmin has objected to the Report and Recommendation. Garmin's Objs. (Dkt. No. 209).

Garmin's objections rely on *Powertech Tech. Inc. v. Tessera, Inc.*, 660 F.3d 1301 (Fed. Cir. 2011). In *Powertech*, the Federal Circuit first noted its prior holding that "sales authorized under a license do not become unauthorized or infringing sales because a licensee subsequently delays royalty payments due under that license." *Powertech Tech.*, 660 F.3d at 1308 (quoting *Tessera, Inc. v. ITC*, 66 F.3d 1357, 1370 (Fed. Cir. 2011). The court then vacated the district court's dismissal on jurisdictional grounds and remanded with instructions to apply that holding.

This case is distinguishable from *Powertech* because neither *Garmin Int'l v. ITC*, No. 2016-1572, 2017 WL 2558175 (Fed. Cir. June 13, 2017), nor *Navico Inc. v. ITC*, No. 2016-1533, 2017

WL 2558168 (Fed. Cir. June 13, 2017), have a legal holding applicable to the patents asserted in

this case. Rather, the Federal Circuit reviewed the ITC's findings and conclusions as to obvious-

ness concerning Navico's U.S. Patents 8,305,840 and 8,605,550. While the appellate court held

certain claims of those patents obvious based on the combination of two prior art references also

at issue here (Tucker and Betts), Garmin, 2017 WL 2558175, at *6, the '840 Patent and '550 Patent

are not at issue in this case. Moreover, the appellate court did not hold there was a motivation to

combine Tucker and Betts as a matter of law, but rather that there was substantial evidence to

support the ITC's finding of such a motivation. Navico, 2017 2558168, at *6 ("There was substan-

tial evidence to find such a motivation.").

Having considered the Report and Garmin's objections, the Court concludes Magistrate

Judge Payne's Report and Recommendation is correct. **IT IS THEREFORE ORDERED** that the

Report and Recommendation (Dkt. No. 200) is hereby ADOPTED. Garmin's Motion for Partial

Summary Judgment (Dkt. No. 165) is **DENIED**.

So ORDERED and SIGNED this 6th day of September, 2017.

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE